

GENERAL TERMS AND CONDITIONS OF PURCHASE V2.0 of SAB Sondermaschinen und Anlagenbau GmbH



Edition from 20.02.2017

1. Scope of Application

- 1.1 The following General Terms and Conditions of Purchase shall apply to all contractual relations between SAB Sondermaschinen und Anlagenbau GmbH, hereinafter "SAB," and its contractors and suppliers (suppliers, contractors, subcontractors), hereinafter "Suppliers."
- 1.2. All orders made are subject to these terms and conditions and thus become a component of the contract, unless otherwise expressly agreed upon in writing in the commissioning.
- 1.3. SAB opts out of all other and/or deviating terms of the contract or delivery terms of the Supplier, in particular contradictory General Terms and Conditions of Business of the Supplier. The unconditional acceptance of deliveries and services or the unconditional payment by SAB does not implicate an acknowledgment of other and/or deviating terms of the contract or delivery terms of the Supplier, in particular the contradictory General Terms and Conditions of Business of the Supplier.

2. Orders and Scope of the Contract

- 2.1. The order must be confirmed promptly, at the latest within 3 days of receiving the price and delivery time quotation. Silence from the Supplier results in the complete acceptance of the order, which the purchaser can cancel.
- 2.2. Any changes to the agreed upon scope of delivery after the conclusion of the contract requires written confirmation by SAB.
- 2.3. The Supplier has to professionally check the requirements from SAB and immediately report any obstacles to or problems with the fulfilment of the contract (warning obligation).
- 2.4. The Supplier guarantees that the delivered goods or services rendered are free from defects, with the guaranteed or expected properties of something state-of-the-art, and can be used error-free according to the intended use.
- 2.5 The delivery locations are those locations which have been contractually agreed upon. If no agreement has been reached, then DAP Deutschlandsberg Incoterms 2010 is to be assumed within the European Union and DDP Deutschlandsberg Incoterms 2010 outside the European Union.

3. Prices and Payments

- 3.1. The agreed upon prices are fixed prices, unless otherwise agreed. Within the European union, prices are calculated according to Incoterms 2010 DAP, outside the European Union Incoterms 2010 DDP.
- 3.2. Invoices must contain all of the following legal components.

For delivery within Austria:

- VAT number or tax number of the Supplier

For delivery outside and inside the EU:

- UID number of the Supplier
- The order number assigned by SAB
- Information on the delivery or rendered service
 - Delivery note number, date of dispatch, quantity and unit,
 - Value of the delivery (price per item and total price, unit price, currency unit)
 - Price of packaging (per unit of product)
 - Number of general cargo, weight (gross/net)
 - Delivery address/unloading location
 - VAT rate
 - Company name of the Supplier
 - Place of business and company registration number of the Supplier

- 3.3. All prices include packaging but exclude statutory sales tax. All other taxes, customs duties and other duties or charges are borne by the Supplier. If necessary, SAB is entitled to deduct any incurred withholding tax from the price.

- 3.4. Quotations are binding and will not be reimbursed to the Supplier by SAB. Electronic invoices are to be sent exclusively to the e-mail address: office@sab-austria.com
- 3.5. Unless otherwise agreed upon in writing, SAB is entitled to settle invoices within 21 days with a 3% cash discount, or within 60 days net of the invoice receipt.
- 3.6. In the case of deliveries before the agreed delivery date, the date of payment will be based on the agreed delivery date.
- 3.7 The payment period begins when the Supplier has delivered the goods in full (including all related documents, e.g. certificates, certifications ... etc.)

4. Deliveries

- 4.1. Agreed upon dates and deadlines are binding.
- 4.2. Partial deliveries are only permissible with a corresponding agreement. A technical description and, if necessary, a user manual must be attached free of charge to each delivery.
- 4.3. If agreed dates are not adhered to, the Supplier is in default.
- 4.4. The unconditional acceptance of a delayed delivery does not imply an automatic waiving of claims for compensation due to the delayed delivery.
- 4.5. If the Supplier recognises that the delivery cannot likely be made, or cannot be delivered completely on schedule and free of defects, the Supplier must immediately notify SAB in writing of the reasons and the expected extent of the delay.
- 4.6. In the event of default, SAB will provide the Supplier with a reasonable grace period of 7 calendar days, before substitute performance/service.
- 4.7. If the grace period is not met, or the Supplier does not give notice that a delivery is not possible within the grace period, SAB is entitled to carry out a substitute or replacement order, whereby the Supplier is liable for the additional costs and the damage resulting from the delay.
- 4.8. In the event of default, SAB is entitled to charge a contractual penalty of 1% of the order value per calendar day, but not more than 10% of the order value, but this does not preclude any statutory claims for damages.
- 4.9. The risk of destruction of the goods during transport is borne by the Supplier, unless otherwise agreed upon in the order.
- 4.10. An acknowledgement of receipt only confirms the receipt of the delivery, but not the proper fulfilment of the contract.
- 4.11. Unless otherwise agreed in writing between the Supplier and SAB, the transfer of risk of the goods from the Supplier to SAB is in accordance with the agreed upon Incoterms 2010 stipulated in the delivery contract. If the Incoterms 2010 are not agreed upon between the Supplier and SAB, DAP Deutschlandsberg Incoterms 2010 apply for delivery of goods within the European Union and DDP Deutschlandsberg Incoterms 2010 for outside the European Union.

5. Inventions, Industrial Property Rights

- 5.1. The Supplier grants SAB a free, transferable and unlimited right of use in the case of patentable inventions as part of the legal relationship, in particular in the case of development activities of the Supplier.
- 5.2. The Supplier acknowledges that SAB operates internationally and that goods are used worldwide, where applicable. The Supplier warrants that all deliveries will not infringe any third party's industrial property rights, and SAB will hold all enforceable claims made under this title and will indemnify and be held harmless with respect to all resulting disadvantages

6. Warranty, Liability

- 6.1. The Supplier guarantees that the delivery is complete and free from defects, which is understood as material defects and defects of title. The Supplier also guarantees that it will comply with all laws and regulations concerning the production and, if applicable, the development of the goods as well as the

fulfilment of the obligations and responsibilities of the Supplier in the respective sales markets.

- 6.2. For all goods, the warranty period begins with the date of transfer and ends at the earliest of the following dates: (i) on the expiry date of a guarantee given to the customer by SAB on the goods or products in which the goods have been installed into; or (ii) The condition of this clause is subject to a possible extended warranty period, provided that such is required by the national laws of the sales market that the goods or products (which the goods have been installed into) will be sent to.
- 6.3. SAB will inspect deliveries for defects and, if necessary, report the defects to the Supplier. The Supplier waives the objection of the delayed notification of defects.
- 6.4. The Supplier shall promptly rectify any reported defects. The allowed time period for this is 24 hours during plant downtimes, otherwise 48 hours.
- 6.5. SAB can set a reasonable deadline for the Supplier for improvements. If the Supplier does not comply with the improvement in the sense of a complete correction of the defect, SAB has the right to rectify the defects itself or to have them rectified by a third party or to return the defective goods at the expense of the Supplier. In cases where defects must be immediately rectified to avoid major damages, a time extension is no longer required. If the same goods are repeatedly supplied defectively, SAB is entitled to terminate the entire delivery contract, provided SAB has notified the Supplier in writing of the defectiveness of the goods and the Supplier continues to deliver defective goods after this notification. The Supplier is liable for all costs arising from rectifying defects. The defect shall be rectified at the place of delivery at the option of SAB or, if different, at the place where the delivery was installed or otherwise operated.
- 6.6. In the event of non-rectifiable defects, SAB may choose between a price reduction or the termination of the contract.
- 6.7. The warranty period (6.2.) is suspended while any defects are being rectified and will begin to run again after the defect has been completely rectified.
- 6.8. The Supplier is liable to SAB for all costs related to the rectification of defects. This also applies to damages which arise due to the defective delivery or design (consequential damages). This also applies in particular to the expenses that SAB incurs, such as transport, work and material costs, costs of quality control and costs which SAB has to pay to its own clients.
- 6.9. As long as defects are present, the purchase price or work wages are not due and SAB can retain the purchase price or work wages.
- 6.10. Other statutory rights remain unaffected.

7. Other Liability Provisions / Compliance with Legal Requirements

- 7.1. Unless otherwise stipulated in these General Terms and Conditions of Purchase, the Supplier is liable for damages and losses suffered by SAB as a result of a breach of the Supplier's obligations under the delivery contract.
- 7.2. The Supplier will hold SAB and its affiliate, harmless and exempt from all liabilities, costs, damages and expenses (including court and law enforcement costs) resulting from a legal claim for death, personal injury or property damage or is caused by (a) defective goods, (b) breach of duty of the delivery contract by the Supplier (c) intent or negligence of the Supplier (d) or failure to comply with applicable laws, statutes, legislations or legal notices.
- 7.3. In connection with the goods or otherwise, if the employees, subcontractors or other representatives of the Supplier (hereinafter referred to as the "representative of the Supplier") are located at a SAB factory, the Supplier is responsible for the actions and omissions of the representatives of the Supplier in or around SAB's respective business premises, and hereby declares his / her consent to indemnify and hold SAB harmless from any liability for damage to, or injury to, or death of any persons arising as a result of the action or omissions of the representatives of the Supplier, whether because of the delivery contract or for another reason. The

indemnity in the clause does not apply if the claim was caused by gross negligence or intent on the part of SAB.

- 7.4. The Supplier undertakes to indemnify and hold SAB and its affiliates harmless when selling the goods or products which the goods are installed in, as well as all their customers, which also extends the said obligation to indemnify and hold harmless to include liability, damages, losses, claims and costs (including costs of legal representation), which were caused by any action to recall goods or products which the goods are installed into, or related to such. When deciding on the implementation of such a recall action, SAB shall exercise its discretion under duty and duly take into account the interests of the Supplier.
- 7.5. If a third-party makes a claim (hereinafter referred to as "third party claim"), which could be part of indemnifying and holding harmless under this clause 7, SAB shall notify the Supplier in writing and the Supplier shall support SAB to a reasonable extent in accordance with its requirements regarding the defence and managing the defence.
- 7.6. This Clause 7 applies regardless of whether the above-mentioned costs, damages, losses, claims and expenses are directed against SAB itself or against its affiliates. However, the Supplier is not liable for such liabilities, costs, damages, loss, claims and expenses caused by negligence or intent on the part of the purchaser.
- 7.7. The Supplier shall ensure compliance with all regulations in relation to industrial law, labour, social security, taxation and other legal provisions, in particular for all costs and expenses arising in connection with the construction of industrial premises abroad and shall indemnify and hold SAB and its customers harmless.
- 7.8. The Supplier undertakes to notify SAB promptly of any changes which are connected with the quality or the conformity of the products, and which may be in conflict with national, international or European provisions/laws/regulations.

8. Assigning and Offsetting Claims

Without the consent of SAB, the Supplier is not allowed to assign its accounts receivable against SAB to third parties, offset these claims or pledge these claims.

9. CE-Conformity

The Supplier is obliged to hand over a CE Declaration of Conformity including the corresponding documentation together with the first delivery. If other legally prescribed documents are necessary for the delivery or services of the supplier, these must be provided in any case.

10. Cases of Force Majeure

Unavoidable events in the sense of force majeure, such as natural events, social unrest, or other unavoidable events, SAB is exempt from its obligations under the contract for the period of its duration. SAB is entitled to terminate the contract in whole or in part if the event results in a significantly lower demand or the elimination of the demand.

11. Non-disclosure

- 11.1. The Supplier accepts a duty of non-disclosure.
- 11.2. The duty of confidentiality covers all information and all knowledge which is made available to the other party within the framework of the business relationship or otherwise known to it, provided that this information is not publicly known or is used to comply with legal requirements such as a duty of disclosure (e.g. against the financial authorities), as well as the facts of the business relationship itself.
- 11.3. All information is only allowed to be made available to those persons who need this information to fulfil the contract. If subcontractors are employed, the duty of confidentiality is transferred to the subcontractor.
- 11.4. After the fulfilment of the contract, all project-related documents must be returned to SAB, as long as SAB no longer needs them, to be destroyed or deleted.
- 11.5. Selling spare parts to customers and third party suppliers of SAB is not permitted.

12. Termination/Dissolution

SAB is entitled to terminate the contract with immediate effect if there are important reasons. Important reasons are, in particular, the insolvency of the Supplier, a delay (paragraph 4.7), a breach of the non-disclosure agreement (article 11), the imminent or already entered into insolvency and other serious reasons which shakes SAB's confidence in the proper fulfilment of the contract.

13. Employees

- 13.1 The Supplier is prohibited from poaching or hiring employees of SAB or a company affiliated with SAB. This non-solicitation agreement is spatially unlimited and has a time limit of 3 years, and the hiring prohibition is spatially limited to Europe and has a time limit of one year after the complete fulfilment of the contract. In the event of a breach of this clause, the Supplier shall pay SAB a non-judicial penalty of a gross annual salary of the employee concerned.
- 13.2. The Supplier must ensure that all provisions of labour law, in particular those relating to the protection of workers, are complied with. Furthermore, it must be ensured that all employees employed in the project are covered by social insurance and that the workplace at the place of employment is legally permissible. This must be demonstrated to SAB on request.

14. Final Provisions, Applicable Law, Jurisdiction

- 14.1. All declarations must be in writing.
- 14.2. Austrian law shall apply exclusively to the exclusion of conflict of laws and the UN Convention on the International Sale of Goods
- 14.3. For disputes arising from the contract, only the competent court of law in Graz is responsible.
- 14.4. If these General Terms and Conditions of Purchase contain no, or only a partial regulation, the legal provisions at the time of the conclusion of the contract remain unaffected.
- 14.5. Should any provision of these General Terms and Conditions of Purchase be or become invalid, the validity of the remaining provisions shall remain unaffected and the invalid provision shall be replaced by a wording that is as close as possible to the intended purpose.
- 14.6. If a non-German language version of the above General Terms and Conditions of Purchase is also available, the German language version is binding.